

## Message Text

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ACTION XMB-07

INFO OCT-01 EUR-25 ADP-00 EB-11 L-03 CIAE-00 INR-10

NSAE-00 RSC-01 TRSE-00 RSR-01 /059 W

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R 111130Z JUL 73

FM AMEMBASSY BERN

TO SECSTATE WASHDC 7972

INFO AMEMBASSY VIENNA

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E.O. 11652: N/A

TAGS: ETRD, SZ

SUBJECT: WITHHOLDING TAXES ON INTEREST PAYMENTS: EXIMBANK CFF  
PROGRAM

REF: STATE 134166; BERN 2530

1. EMBASSY HAS RECEIVED LETTER DATED JULY 4 FROM DR. KURT  
LOCHER, DIRECTOR OF SWISS TAX ADMINISTRATION, STATING  
THAT LOANS UNDER CFF PROGRAM CANNOT RPT CANNOT BE EXEMPTED  
FROM ANTICIPATORY TAX. DR. LOCHER POINTS OUT, HOWEVER,  
THAT UNDER SWISS-US DOBLE TAXATION CONVENTION ANTICIPA-  
TORY TAX CAN BE REDUCED TO FIVE PERCENT.

2. FOLLOWING ARE SUBSTANTIVE PORTIONS OF DR. LOCHER'S  
LETTER:

QUOTE

THE GRANTING OF INTEREST BEARING LOANS BY THE  
EXIMBANK TO SWISS FINANCIAL INSTITUTIONS HAS THE FOLLOWING  
FISCAL CONSEQUENCES IN SWITZERLAND:

QOUTE

UNDER THE FEDERAL LAW ON STAMP DUTIES, LOANS EXTENDED BY  
THE EXIMBANK TO SWISS BANKS FOR A PERIOD EXCEEDING TWELVE  
MONTHS ARE CONSIDERED AS DEPOSITS WITH DOMESTIC BANKS  
WHICH ARE SUBJECT TO THE CAPITAL ISSUE TAX OF 0.12 PERCENT

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FOR EACH YEAR OF DURATION, PROVIDED THEY ARE GRANTED AT

A TIME THE FEDERAL LAW ON STAMP DUTIES OF OCTOBER 4, 1917, IS STILL IN FORCE (ART. 11 PAR. 1(B), ART. 12 AND 14 STAMP DUTY ACT). LOAN CONTRACTS CONCLUDED AFTER THE NEW FEDERAL LAW ON STAMP DUTIES, APPROVED IN JUNE, 1973, BY THE FEDERAL PARLIAMENT, HAS COME INTO FORCE WILL BE EXEMPT FROM THIS TAX.

QUOTE

WITH RESPECT TO THE FEDERAL ANTICIPATORY TAX, INTEREST PAID BY SWISS BANKS TO THE EXIMBANK FOR CREDITS GRANTED UNDER THE CFF PROGRAM ARE TAXED AS CLIENT DEPOSITS AT A RATE OF 30 PERCENT (ART. 4 PAR. 1(D) ANTICIPATORY TAX ACT). HOWEVER, ACCORDING TO SWISS PRACTICE, AN EXCEPTION IS MADE FOR INTEREST FROM LOANS WHICH ARE GRANTED FOR A PERIOD NOT EXCEEDING TWELVE MONTHS; SUCH INTEREST ARE (SIC) EXEMPT FROM ANTICIPATORY TAX.

QUOTE

SINCE THE LEGAL BASIS FOR TAXING LOANS UNDER THE CFF PROGRAM IS GIVEN IS SEE NO POSSIBILITY TO DEPART FROM THE RELEVANT LAWS OR TO ENLARGE (SIC) THE PRESENT PRACTICE BY EXEMPTING INTERBANK LOANS OF MORE THAN ONE YEAR DURATION FROM ANTICIPATORY TAX OR STAMP DUTIES. NEVERTHELESS, IT HAS TO BE BORNE IN MIND THAT THE ANTICIPATORY TAX ON SUCH INTEREST CAN BE REDUCED TO 5 PERCENT ACCORDING TO ARTICLE VII OF THE DOUBLE TAXATION CONVENTION BETWEEN SWITZERLAND AND THE UNITED STATES. END QUOTE

3. EMBOFF DISCUSSED LETTER WITH DR. DANIEL LEUTHI OF SWISS TAX ADMINISTRATION WHO SAID THERE HAD APPARENTLY BEEN SOME MISUNDERSTANDING ABOUT LEGAL BASIS FOR LEVYING ANTICIPATORY TAX ON CFF LOAN INTEREST. HE SAID THAT CERTAIN EXEMPTIONS WERE BASED ON ADMINISTRATIVE INTERPRETATION OF ANTICIPATORY TAX ACT BUT APPLICATION OF TAX TO CFF INTEREST REQUIRED BY LAW.

4. ALTHOUGH DR. LOCHER'S LETTER APPEARS TO GIVE A DEFINITELY NEGATIVE ANSWER TO QUESTION, DR. LEUTHI IMPLIED THERE MIGHT STILL BE SOME WAY TO RESOLVE PROBLEM. HE DECLINED TO BE MORE SPECIFIC ABOUT POSSIBLE SOLUTION BUT SAID THAT VISIT BY GEORGE DIETZ WOULD BE MOST USEFUL.

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## Message Attributes

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**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** n/a  
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**Decaption Date:** 01 JAN 1960  
**Decaption Note:**  
**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Authority:** worrelsw  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
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**Previous Channel Indicators:**  
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**Previous Handling Restrictions:** n/a  
**Reference:** 73 STATE 134166, 73 BERN 2530  
**Review Action:** RELEASED, APPROVED  
**Review Authority:** worrelsw  
**Review Comment:** n/a  
**Review Content Flags:**  
**Review Date:** 03 OCT 2001  
**Review Event:**  
**Review Exemptions:** n/a  
**Review History:** RELEASED <03-Oct-2001 by elyme>; APPROVED <28 FEB 2002 by worrelsw>  
**Review Markings:**

Declassified/Released  
US Department of State  
EO Systematic Review  
30 JUN 2005

**Review Media Identifier:**  
**Review Referrals:** n/a  
**Review Release Date:** n/a  
**Review Release Event:** n/a  
**Review Transfer Date:**  
**Review Withdrawn Fields:** n/a  
**Secure:** OPEN  
**Status:** NATIVE  
**Subject:** WITHHOLDING TAXES ON INTEREST PAYMENTS: EXIMBANK CFF PROGRAM  
**TAGS:** ETRD, SZ  
**To:** STATE  
**Type:** TE  
**Markings:** Declassified/Released US Department of State EO Systematic Review 30 JUN 2005